

20 OCT 1977

MEMORANDUM FOR: Chief, Regulations Control Branch, DDA

SUBJECT : Proposed [] CIA Records Destruction
Policy (Job 7973)

1. We are glad to see that a definition of the term "records" has been added to the draft notice. We recommend, however, that it be followed by a statement, either part of paragraph 1.a. or a separate subparagraph, of what are not "records." Such a statement could be based on paragraph 3 of the draft, amplified to give whatever additional guidance is possible. For example, it might state whether working files, soft files, drafts and calendars are "records." The definition of what are and what are not "records" for purposes of the Agency's processing of requests under the Freedom of Information Act, which is found in section 1900.1 (page 7295) of the Federal Register for 19 February 1975, may be of some assistance in this connection. Paragraph 3 should then be modified to read somewhat as follows: "Items which are not included in the 44 U.S.C. 3301 definition of 'records' are not subject to the provisions of this notice and may be destroyed when no longer needed."

2. If paragraph 2.c. is intended to apply to records which are being processed for destruction in accordance with an approved records control schedule, we propose that the first sentence be amplified as follows: "It also must be determined that records being processed for destruction in accordance with an approved records control schedule are not related to actual or impending litigation or to matters under investigation by the Department of Justice or Congress." If it is intended to apply also to other records, we believe some modification of the stated procedure is called for.

3. In most cases the custodian or the component records management officer will not be in a position to determine whether there is any impending litigation to which records being processed for destruction are related, and might not be able to make such a determination so far as litigation in progress is concerned. We believe the second and third sentences of paragraph 2.c. of the draft should be modified as follows: "The ~~initial determination will be made by the~~ component RMO

and the custodian based on their review of the records and on information provided by the General Counsel to the component RMO through the Agency and directorate RMO/s will obtain a determination in this regard from the Office of General Counsel through the directorate RMO. If the ~~initial~~ review Office of General Counsel ~~raises any~~ determines that there is a question as to actual or impending legal or investigative requirements for the records, authority to destroy them must be obtained by routing Form 141c, Request for Authorization to Retain or Destroy Questionable Records, through the custodian and the component and directorate RMOs, to the Records Administration Branch, ISAS."

4. We suggest that consideration be given to adding to Form 139 a space for authorization to retain or destroy records, so as to eliminate the need for a separate Form 141c.

5. There will probably be occasions when the description of documents or the names of requesting or concurring officials will require classification of the form used. We believe a space should be provided on the various forms for a classification to be typed or stamped when that is required. If the forms cannot be amended immediately, they should be amended as soon as possible. In either case, the draft notice should include a reminder that the forms which are completed in connection with the destruction procedure should be classified when appropriate.

Chief

DDO

Add as footnote to Paragraph 1:

"Records" include ~~"soft" files and copies of documents,~~
whether in "soft" or "official" files, ~~if they~~ ^{when that} deal with record
matters as defined in paragraph ~~above~~ ^{merely} and are not duplicated
~~by~~ ^{of} ~~officially recognized record files or documents,~~ ^{copies filed} elsewhere
in the Agency. Records also include such things as appointment
calendars ^{diaries} and notes ~~made by policy level officials (staff or~~
~~division chief or higher)~~ if they deal with record matters as
defined above.

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